AN

Authentical Account

OF THE

FORMALITIES,

AND

Judicial Proceedings,

Upon ARRAIGNING, at

WESTMINSTER,

A

Peer of the Realm

Before A

Lord High-Steward,

Funesta Securis, Regni Securitas.

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THE FORMALITIES, AND Judicial Proceedings, Upon Arraigning a Peer for Treason, &c.

AS the *Royal Power* and *Sovereignty* of the *King* of *England* is a repleat compacted Body, and impartible; even so the Attributes thereof are (as *Jurists* speak) so indivisible in themselves, so naturally and intrinsecally inherent in the *Crown*, that they cannot be made away, or in such manner communicated to the Subject, as to divest *himself* of them, to the lessening *Sovereign Majesty*; yet by Trust, and Delegate Power, the *Executive Part* may be transferred to others, to ease him of a troublesome Burthen.

Now among those several Ministers, or Officers of Law, that are by *His Most Excellent Majesty* substituted to ease him of Labour, (but not to deprive him of Power) the *Lord High-Steward* of *England* is one of the first Magnitude; the Nature of whose *Office* will the better be understood, by insisting upon, (in my way to a more direct Application to the substance of the *Title*, and *Design* in hand) the *Heads* or *Particulars* following, *viz.*

1. The Etymology of the words, (*Steward* and *Seneſchallus.*)

2. His *Lordſhips Stile*, and the *Antiquity of his Office*,

3. How this great Office was *formerly holden*, and *how at this time.*

4. The *Extent of his Juriſdiction and Power*, and the *Rules he ought to judge by.*

Cok. Litt. 61. a. For the derivation of the words *Steward* and *Seneſchallus*, ſome ſay the firſt is derived of *Stewe, i. e.* a Place, and *Ward* which ſignifieth a Keeper Warden, or Governour.

Others ſay that it comes from *Steda* a *Saxon* word, which ſignifies a place alſo, and *Ward*, as it were the Keeper or Governour of that place: tis a word diverſly uſed in this Kingdom; In the firſt acception, 'tis taken for the *Lord High-Steward*, out of which Magiſtracy, lower Officers have their riſe; *Senechal de l' Hoſtel de Roy*, the *Steward of the Kings moſt Honourable Houſhold*, *Anno* 24. *H.* 8. *c.* 13. whoſe Title was changed to that of *Great Maſter*, *Anno* 32 *H.* 8. *c.* 39. but this Stat. was repealed by that of 1 *Mar.* 2 *Parl. c.* 4. and the Office of the Lord Steward revived.

Lib. 9. *Le Counter de Salop's* Caſe 48. b.

Plowd. Com. f. 152

There is alſo a *Steward of the Marſhalſea*, *Anno* 33 *H.* 8. *c.* 12. and likewiſe a *Steward of a Mannor*, whom *Fleta* fully deſcribes. To be ſhort, this Word is of ſo great diverſity, that there is no Corporation of any Account, or Houſe of any Honour, through the Realm, but it ſhall have an Officer belonging to it of this Name.

Lib. 2. *c.* 71.

Minſheus. But I proceed to the Word *Seneſchallus.*

Seneſchal is a *French* Word, the *Italians* call it *Seniſcalco, dict. a Schalk, i. e. Servus aut Officialis & geſind, i. e. familia*; but here 'tis taken for the *High-Steward* of *England.*

Some

Some derive it of *Sein*, a Houſe or Place, and *Schale* an Officer; others ſay *Sen* is an ancient word for Juſtice, ſo that moſt naturally it ſignifies *Officiarius Juſtitiæ*, and this agreeth well with his Authority and Duty, to proceed *ſecundum Leges & conſuetudines Angliæ*.

In the next place, I am to conſider his *Lordſhips Stile*, which in Latin is *Seneſchallus Angliæ*, and his *Court* is Intituled, *Placita Coronæ coram Seneſchallo Angliæ*; and when he ſitteth by force of his Office, he ſitteth under a Cloth of Eſtate, and ſuch as direct themſelves to him, ſay, *Pleaſe your Grace, my Lord High Steward of* England. *Co. 4. Inſt. 59.*

As to the *Antiquity of the Office*, 'tis very ancient, and was before the Conqueſt: For Sir *Ed. Coke* tells us, that he himſelf hath read an Authentical Manuſcript, intituled, *Authoritas Seneſchalli Angliæ*; which putting an Example of his Authority, ſaith, *Sicut accidit* Godwino, *Comiti Kanciæ, tempore Regis* Edwardi, *Anteceſſoris* Willielmi *Ducis* Normandiæ, *pro hujuſmodi male geſtis, & conſiliis ſuis, per Seneſchallum Angliæ adjudicatus, & foris fecit Comitivam ſuam.* In the time of *William the Conquerour*, *William Fitz-Euſtace* was Steward of *England*.

Next come we to conſider, how this Great Office was formerly holden, and how at this time.

This Magiſtracy was formerly of Inheritance, and belonged to the Earldome of *Leiceſter*, as appeareth by a Record produced by Sir *Ed. Coke*; *Seneſchalcia Angliæ pertinet ad Comitivam de* Leiceſter, *& pertinuit ab antiquo.*

Other Records teſtifie, that it belong'd to the Barony of *Hinckley*; and my Lord *Coke* tells us, that in the Reign of *William Rufus*, and *H. 1. Hugh Grant ſemenel*, Baron of *Hinckley*, held that Barony by the ſaid Office; ſo

so that there seems a diversity between these Records; but we shall reconcile it thus: *Hinckley* was parcel of the Possessions of the E. of *Leicester*; for *Robert Bellamont*, E. of *Leicester*, in the Reign of *H.* 2. married with *Petronil*, Daughter and Heir of the said *Hugh Grantsemenel*, Baron of *Hinckley*, and Lord Steward of *England*; and so it continued, till by the forfeiture of *Simon Montford* it came to King *H.* 3. who in the fiftieth year of his Reign created *Edmond* his second Son Earl of *Leicester*, Baron of *Hinckley*, and High-Steward of *England*; which continued in his Line, until *Henry* of *Bullingbrook*, Son and Heir of *John* of *Gaunt*, Duke of *Lancaster*, who was the last that had any Estate of Inheritance in the Office of the Steward of *England*.

Since the time of *H.* of *Bullingbrook*, this great Office was never granted to any Subject, but only *hac Vice*: and the reason was, for that the Power of this Officer is so transcendent, that it was not holden fit to be in any Subjects hands: For a Record saith, *Et sciendum est quod ejus Officium est supervidere & regnare sub Rege, & immediate post Regem totum Regnum Anglia, & omnes Ministros Legum infra idem Regnum, temporibus pacis & guerrarum, &c.* and proceedeth particularly with divers high Powers and Authorities.

Ephori ἔφοροι *Magistratus quidam Lacedemoniorum oppositi Regibus, qui inspiciebant ea quæ ad Rempub. pertinebant.*

It is a Place of that Transcendency and Heighth, that it might in some sort match the *Ephori* among the *Lacedemonians*: The custom of our Commonwealth hath upon great consideration and policy brought it to pass, that this Officer is of no great duration, but only for the dispatch of some special business, as the Arraignment of some Noble-man, in case of Treason, *&c.* which once ended, his Commission expireth: so that we may describe him thus; *Magistratus est Excelsus, qui per unum diem, a Rege ordinatur, cum aliquo ex Proceribus Regni in Judicium vocatur de noxa Capitali.*

Now

Now we are to take a Proſpect of the Extent of his Lordſhips Juriſdiction and Power, and the Rules he ought to judge by.

Although the Power and Authority of the Lord High-Steward hath been ſince the Reign of King *H.* 4. but *hac Vice*, yet is the *hac Vice* limited and appointed; as when a Lord of Parliament is Indicted of Treaſon or Felony, then the Grant of this Office under the Great Seal of *England*, is to a Lord of Parliament, reciting the Indictment: *Nos conſiderantes quod Juſtitia eſt virtus Excellens, & Altiſſimo complacens, eaque pra omnibus uti volentes, ac pro eo quod Officium Seneſchalli Angliæ, cujus præſentia pro adminiſtratione Juſtitiæ, & Executione ejuſdem in hac parte faciend. Requiritur, ut accepimus jam valeat: de fidelitate Strenuitate, provida Circumſpectione & Induſtria Veſtris plurimum confidentes, Ordinavimus & Conſtituimus Vos ex hac cauſa & cauſis Seneſchallum Noſtrum Angliæ ad Officium illud cum omnibus eidem Officio in hac parte debitis & pertinentibus hac vice gerend. accipiend. & exercend. Dantes & concedentes vobis tenore præſentium plenam & ſufficientem Poteſtatem & Authoritatem ac Mandatum ſpeciale Indictamentum prædict. &c.* So that this Great Officer is wholly reſtrained to proceed only upon the recited Indictment.

At every Coronation he hath a Commiſſion under the Great Seal, *hac Vice*, to hear and determine the Claims for Grand Serjeanties, and other Honourable Services, to be done at the Coronation, for the ſolemnizing thereof; for which purpoſe he holds his Court ſome convenient time before the Coronation. *Cok's Litt.* 79. a. b. 4 *Inſt.* 59.

The firſt Perſon that was created *hac Vice* for ſolemnizing the Coronation of *H.* 4. was *Thomas* his ſecond Son; and upon the Arraignment of *Thomas Holland*, Earl

Earl of *Huntingdon*: the first that was created Steward of *England*, *hac Vice*, was *Edward* Earl of *Devon*.

Lastly, The Order and manner of Arraigning a Peer of the Realm before this Great Officer is to be consider'd.

As the Peers of the Realm, who are Tryers, are not sworn, so the Lord High-Steward, being Judge, is not sworn likewise; yet ought he to proceed according to his Letters-Patents, *Secundum Legem & consuetudinem Angliæ*; for all Commissions and Charters for Execution of Justice, are *facturi quod ad Justitiam pertinet, secundum Legem & consuetudinem Angliæ.*

Co. Litt. 142. a. 4 *Inst. f.* 60.

But admit the Commission should be, *Secundum sanas Discretiones vestras*: How then?

I answer, *Discretio est discernere per Legem quid sit Justum*; that is, to discern by the right Line of Law, and not the warpt measure of private Opinion: *Si a Jure discedas, vagus eris, & erunt omnia incerta*: 'Tis certain he that out-runs the Law, hastens to his own destruction. Commissions then that Authorise proceeding *secundum sanas discretiones, &c.* in sense are *secundum Legem, &c.*

1 *H.* 4 *f.* 1. a. The Earl of *Huntingdon* was Indicted of High-Treason in *London*, by a Commission before the Mayor and Justices; for that he, with other persons, agreed to go a Mumming (which the *French* call *Maquerade*) on the Night of *Epiphany*, in which they intended to kill the King, then at *Windsor*: And after the King granted a Commission to the Earl of *Derby*, reciting, That whereas *George*, E of *H.* was Indicted of High-Treason, and that he would that right should be done; and because the Office of the Steward of *England* is now void, he grants it to the said E. of *Derby*, to do Justice to the said E. of *Huntingdon*, commanding by the same Commission

ſion all the Lords to be attendant upon him; and Precept was likewiſe given by the ſame to the Conſtable of the *Tower*, to be attendant on him, and to bring the Priſoner (*viz.*) the E. of *H.* before the ſaid E. of *D.* on the day appointed: whereupon the E. of *D.* the ſame day ſat in *Weſtminſter-Hall* under a Cloth of Eſtate by himſelf, and the E. of *Weſtmerland*, and other Earls and Barons, ſat at a conſiderable diſtance, and all the Juſtices and Barons of the Exchequer ſat round a Table, and after three *O Yes*'s made, and the Commiſſion read, the Juſtices deliver'd the Indictment to the Lord Steward, which was deliver'd to the Clerk of the Crown, who read it to the ſaid E. of *H.* which he confeſſed; whereupon *Hill* the King's Serjeant prayed Judgment, which the Lord Steward (after he had rehearſed the whole matter) pronounced in this manner; That the E. of *H.* ſhould be taken back to the Tower of *London*, and from thence be drawn to the Gallows, and there hanged; and being yet alive, cut down, and his Entrails drawn out of his body, and burnt; and that he ſhould be beheaded, and quartered, *Et ſic Deus propitiatur Animæ ſuæ.*

The Juſtices then ſaid, that if the E. of *H.* had deny'd the Treaſon, the Lord Steward ſhould have demanded of every Lord in open Court, what they thought in their Conſciences, beginning with the Puiſny Lord; and if the greater number ſaid *Guilty*, then the Judgment to be given as above.

I refer your Lordſhips to *Cambden*'s Annals of Q. *Eliz.* for the manner of the Tryal of *Tho. Howard*, Duke of *Norfolk*, before *George Talbot*, E. of *Shrewsbury*, Lord High-Steward upon that occaſion.

Sir *Ed. Coke* deſcribes the manner how a Peer is to be tryed, in caſe of Treaſon, *&c.* before the Lord High-Steward of *England*.

He muſt be Indicted before Commiſſioners of *Oyer* and *Terminer*, or in the *King*'s-*Bench*, if the Treaſon or miſpriſion, Felony or miſpriſion of Felony, be committed in that County where the *King*'s-*Bench* ſit; when he is Indicted, then the King, by his Commiſſion under the Great Seal of *England*, conſtitutes ſome Peer of the Realm to be, *hac Vice*, Steward of *England*, who is Judg in this caſe. The Commiſſion recites the Judgment generally as 'tis found, and Power given to the Lord Steward to receive the Indictment, *&c.* and to proceed *ſecundum Legem & conſuetudinem Angliæ*. A Commandment is alſo given by the ſame to the Peers of the Realm to be attendant and obedient unto him; as alſo to the Lieutenant of the *Tower*, to bring the Priſoner before his Lordſhip.

Then a *Certiorari* is awarded out of *Chancery*, to remove the Indictment it ſelf before the Lord Steward; which may either bear date the ſame day of the Stewards Commiſſion, or any day after. The Lord Steward directs his Precept under his Seal to the Commiſſioners, to certifie the Indictment ſuch a day and place. He alſo makes two other Precepts, one to the Conſtable or Lieutenant of the *Tower*, to bring the Body of the Priſoner before him, at ſuch a day and place; as alſo to a Serjeant at Arms to ſummon, *Tot & tales Dominos, Magnates & Proceres hujus Regni Angliæ prædicti R. Comitis E. Pares, per quos rei veritas melius ſciri poterit, quod ipſi perſonaliter compareant coram prædict. Seneſchallo apud weſtm. tali die & hora ad faciend. ea quæ ex parte Domini Regis forent facienda*, &c.

In this Summons four things are obſervable.

1. That all theſe Precepts, moſt commonly, bear date in one day.

2. That

2. That no number of Peers are named in the Precept, and yet there must be twelve, or above.

3. That the Precept is awarded for the return of the Peers, before any Arraignment or Plea pleaded by the Prisoner.

4. That the Lords are not *de Vicineto*; and therefore the sitting and Tryal may be in any County of *England*.

At the day, the Lord High-Steward, with six Serjeants at Arms before him, takes his place under a Cloth of Estate, and then the Clerk of the Crown delivers to him his Commission, who re-delivers it. After three *O Yes*'s by a Serjeant at Arms, and Commandment given in the Name of the Lord High-Steward of *England* to keep silence, the Commission is read; then the Usher delivers to the Steward a white Rod, who re-delivers the same, which he holds before the Lord High-Steward. It was deliver'd, upon the like occasion, to the Earl of *Shrewsbury*, by *Garter* King at Arms.

O Yes being again made, Commandment is given in the Name of the H. Steward to all Justices and Commissioners, to certifie all Indictments and Records; which being deliver'd into Court, the Clerk of the Crown reads the Return, and the Serjeant at Arms is commanded to return his Precept, with the names of the E. and Barons by him summoned, and the Return of that is also read; then are the Peers summoned to answer to their Names, which are recorded.

When they have taken their places, and the Prisoner set to the Bar, then the Lord High-Steward declares unto them the cause of their Assembly, and perswades the Prisoner to Answer without fear, assuring him, that he shall be heard with patience, and that Justice shall be done to him.

After this, the Clerk of the Crown reads the Indictment, and proceeds to the Arraignment of the Priſoner; and if he plead *Not Guilty*, the Entry is, *Et de hoc de bono & malo ponit ſe ſuper Pares ſuos, &c.* After which the Lord High-Steward gives a Charge to the Peers, exhorting them to try the Priſoner indifferently, according to their Evidence, which is opened by the King's Learned Counſel, who produce their Proofs for the King againſt the Priſoner. Some, or all of the Judges, are ever attendant upon the Lord High-Steward, and take their places at the feet of the Peers.

After the Evidence is given for the King, and the Priſoners Defence made, he is withdrawn from the Bar, under the cuſtody of the Lieutenant, whilſt the Tryers go to ſome place to conſider of their Evidence; upon debate of which, if they doubt of any matter, they cannot ſend to the High-Steward to ask the Judges any Queſtions of Law, but in the hearing of the Priſoner, that he may know whether the caſe be rightly put, for *de facto jus Oritur*; neither can they ſend for the Judges to know their Opinion, but the H. Steward ought to demand it in Court, in the preſence of the Priſoner.

When the Lords are agreed, they return into Court, and the Lord H. S. publickly in open Court, beginning with the Puiſny Lord, ſays unto him, *My Lord A. is W. V. S. guilty of the Treaſons whereof he hath been Indicted and Arraigned, or any of them?* And the Lord ſtanding up ſays, *Guilty*, or *Not Guilty*; and ſo upward of the reſt *ſerialim.*

The Peers having given their Verdict in the abſence of the Priſoner, the Priſoner is brought to the Bar, whom the Lord High-Steward acquaints with the Verdict of his Peers, and gives Judgment accordingly, either of Condemnation, or Acquittal. After

After the Service is performed, and *O Yes* made for diſſolving the Commiſſion, the white Rod is taken by the Lord High-Steward in both his hands, and broken in pieces.

Thus have I preſented to your Lordſhips a Scheme of that ſolemn order and manner, how a Peer of the Realm is Arraigned before the Lord High-Steward of *England*. I might amaſs ſeveral Preſidents of like nature, wherein the Axe of Death is born before the Priſoner, with the Edge from him; and after being found Guilty, with the Edge to him. I wiſh your Lordſhips may never know more of this Point by a fatal experience.

Now it remains that I give *Solutions* to thoſe *Queries* your Lordſhips were pleas'd to put concerning Tryals, Treaſons, *&c.* by which I wiſh you may arrive at ſome reaſonable ſatisfaction.

QUERY I.

How Antient this Tryal by Peers may be?

SOL.

Without doubt 'tis Coetaneous with the Office of the Lord High-Steward, and how old that is, hath been already ſhewn: However, I ſhall preſent one Authority, which proves, that Tryal by the Peerage was in uſe in the Reign of *William the Conquerour*, who in the beginning of his Reign created *William Fitz-Oſborne* (Earl of *Betrevil* in *Normandy*) Earl of *Hereford*. His Son *Roger* ſucceeded him, and was E. of *Hereford*, who under colour of his Siſters Marriage, near *New-Market* in *Camb.* Shire, where many of the Nobility were aſſembled, conſpir'd with them to receive the *Danes* into *England*, and depoſe *William the Conquerour* (who was then in *Normandy*) from his Kingdom of *England*; to effect which, he with others roſe. This Treaſon was reveal'd by *Walter*, E. of *Huntingdon*, who was one of

the

the Conſpirators, and Son to the Great *Syward*, Earl of *Northumberland*; for which Treaſon, *Roger* E. of *Hereford* was apprehended by *Urſe Tiptof*, then Sheriff of *Worceſterſhire*, and after tryed by his Peers, and found guilty of the Treaſon, *per Judicium Parium ſuorum*. But he ended his days in Priſon.

A. 8. *W.* 1.

QUERY II.

Whether a Peer can wave his Tryal by Peers?

SOL.

He cannot wave his Peers, and put himſelf upon the Tryal of Twelve Free-holders; for the Stat. of *Mag. Chart.* is, that he muſt be tryed by his Peers; and ſo it was reſolved in the Lord *Dacre*'s Caſe.

26 *H.* 8.

QUERY III.

What Lords ſhall be tryed by Peers, in caſes of Treaſon, &c?

SOL.

Every Lord of Parliament that hath Voice therein, and called thereto by the King's Writ, ſhall not be tryed by Peers, but only ſuch as ſit *Patrone Nobilitatis*; as Dukes, Marqueſſes, Earls, Viſcounts, and Barons, and not ſuch as are Lords of Parliament, by reaſon of their Baronies which they hold in right of the Church, as Arch-Biſhops, and Biſhops of this Realm; for though they be Lords of Parliament, yet upon an Impeachment either of Treaſon or Felony, they ſhall not be tryed by the Peers of the Realm, but by a Jury of Knights, and other ſubſtantial perſons upon their Oaths; and one reaſon alledged by ſome (how truly let others judge) is, foraſmuch as Archbiſhops and Biſhops cannot paſs in like caſes upon the tryal of any other of the Peers, their Lordſhips being prohibited by the Common and Eccleſiaſtical Laws to be Judges of Life and Death; and this Tryal ought to be Mutual, ſince the performance of it is upon their Honours, without any Oath taken.

And

And here, by the way, your Lordſhips may take notice, how great regard the Law hath to the word of a Peer, when ſpoken upon his Honour. I need ſay no more upon this *Topick*, ſince your Lordſhips in that Excellent Poem, *A PARADOX against Liberty*, have expreſt your thoughts ſo extremely well.

No Temporal Lord, but only Lords of Parliament, ſhall have this kind of Tryal; and therefore the Eldeſt Son, and Heir Apparent of a Duke, in the life of his Father, though he be called an Earl, is excluded: And this was the Caſe of *Henry Howard*, Earl of *Surrey*, Son and Heir Apparent of *Thomas* Duke of *Suffolk*, in the 38. of *H.* 8. Likewiſe the Son and Heir Apparent of an Earl, though he be called Lord, or Baron; and all the younger Sons of Kings are Earls by Birth, though they have no other Creation, yet ſhall they not be partakers of this, or other Priviledges, incident to the Lords of Parliament.

Thoſe that are Barons of *Ireland*, or *Scotland*, committing Treaſon, *&c.* in *England*, ſhall not have their Tryal by Peers, though they were born in *England*, for they receive their Dignity from a King of their Nations. *Cok. Litt.* 16. b. 3 *Inſt. f.* 30. 2 *Inſt. f.* 48.

If a Duke, or other Noble-man of *France*, *Spain*, *&c.* comes into *England* by the King's ſafe Conduct, in which the King ſtiles him Duke, according to his Creation, nevertheleſs in all proceedings in the King's Courts he ſhall not be ſtiled by his Name of Dignity, much leſs a partaker of the Priviledge of this Tryal by Peers. *Co. L.* 7. Calvin's *Caſe.*

But if the King of *England* at this day create one of his Subjects of *Scotland* to be Viſcount within *England*, or by ordinary Summons under his Great Seal call him to the Upper Houſe of Parliament, and aſſign him

a Place, and to Vote there in his Great Council, he ſhall be thereby a Peer of this Realm, and enjoy all their Priviledges.

QUERY IV.

What Witneſſes are required in Indictments and Tryals of Treaſon, or miſpriſion of Treaſon ?

SOL.

By the Ancient Common Law, one Witneſs or Accuſer was not ſufficient to Convict any perſon of High-Treaſon, for, in that caſe, it was to be tryed before the Conſtable and Marſhal by Combat; but they have no Juriſdiction to hold Plea of any thing which may be determined by Common Law: And that two Witneſſes are requiſite, appears by the Books of Law; and the Common Law herein is grounded upon the Law of God, expreſſed both in the Old and New Teſtament, *Deut.* 17. v. 6. *Numb.* 35. v. 30. *Deut.* 19. v. 15. *Matth.* 18. v. 16. 2 *Cor.* 13. v. 1. and this ſeemeth more clear in the Tryal by Peers, becauſe they come not *de aliquo Vicineto*, whereby they may take notice of the Fact, in reſpect of Vicinity, as other Jurors may do. By the Stat. of 1 *E.* 6. *c.* 12. none ſhall be Indicted, Arraigned, Condemned, or Convicted for any Treaſon, *&c.* for which the Offender ſhall ſuffer pains of Death, Impriſonment, loſs or forfeiture of his Goods, Chattels, Lands or Tenements, unleſs he be accuſed by two ſufficient and lawful Witneſſes, or ſhall willingly without violence confeſs the Fact. The ſame proviſion is made by 5 *E.* 6. wherein I muſt obſerve to your Lordſhips, that two lawful Accuſers, in this Act, are taken for two lawful Witneſſes; for by two lawful Accuſers, and accuſed by two lawful Witneſſes (as 'tis in 1 *E.* 6.) are Identical, which word (*Accuſers*) was uſed, becauſe two Witneſſes ought directly to accuſe, that is, charge the Priſoner,

Mirr. cap. 3. *Ordin. de Attaint. Brad. L.* 5. *f.* 354. 48 *Ed.* 3. 30. 35 *H.* 6. 46. *Forteſcue c.* 32.

ſoner, for the Common Law reſpects none elſe; and therefore lawful Accuſers muſt be ſuch as are allowed by Laws.

And thus 'twas reſolved by the Juſtices in the Caſe of the Lord *Lumley*; for if they ſhould not be taken according to the meaning aforeſaid, then there muſt be two Accuſers, by 5 *E.* 6. and two Witneſſes, by 1 *E.* 6. and the ſtrange conceipt in 2 *Mar.* that one may be an Accuſer by Hear-ſay, was utterly denied in the Lord *Lumley*'s Caſe. *Hill.* 14 *El.* Dyer *f.* 99. W. Thomas *his Caſe.*

And here, ſince your Lordſhips did not make it a *Query*, I ſhall not ſo ſtrictly conſider it, whether the Teſtimony of a Forreigner may be admitted, in caſe of Treaſon. The Duke of *Norfolk* at his Arraignment ſaid, that nothing which was yet produced was of any moment againſt him, ſave only the Biſhop of *Roſs* his Teſtimony; and that (by Opinion of *Bracton*) was not to be admitted, becauſe he was a Forreigner; to which *Callin*, Lord Chief Juſtice anſwer'd, that in ſuch Cauſes as this, the Teſtimony of Forreigners is of force, and it lies in the Peers to attribute to, or derogate from ſuch Teſtimony as they ſhall think fit. *Camb. El. A.* 1572.

Where *Bract.* ſaith, that an Alien born cannot be a Witneſs, it is to be underſtood of an Alien Infidel; for, the Biſhop of *Roſs* being a *Scot* born, was admitted to be a Witneſs, and ſworn 14 *El.* by Opinion of all the Juſtices Aſſiſtants.

If a perſon be accuſed by one Witneſs touching one fact, and by another concerning another fact, the one committed in *Middleſex*, the other in *Surrey*, he that ſwears the fact done in *London*, joyned to the other Witneſs that ſwears to the fact done in *Surrey*, ſhall be eſteemed two ſufficient Witneſſes, in caſe of Treaſon; and ſo was it ruled by the Judges at the *Old-Baily*, upon

on the Tryal of the Five Jesuits (*Whitebread*, *Harcourt*, *Turner*, *Fenwick*, and *Gaven*) according to the Resolution in Sir *H. Vane*'s Case, at the King's-B.Bar, where one Witness prov'd the levying War in one County, and the other prov'd the levying War in another County; and so though they were but single Witnesses of single facts, yet both coming up to the Indictment, they were adjudged two sufficient Witnesses to maintain it.

QUERY V.

Whether a Noble-man being Arraigned, can challenge his Peers?

SOL.

If the party arraigned (says *Coke*) be a Lord of Parliament, and a Peer of the Realm, and is to be tryed by his Peers, he shall not challenge any of them, for they are not sworn as other Jurors be, but find the party guilty, or not guilty, upon their Faith or Allegiance to the King; and they are Judges of the fact, and every of them doth separately give his judgment, beginning at the lowest.

Cok's Litt. 156. b.

Again, he tells us, that the four Knights, Electors of the Grand Assize, are not to be challenged, for that in Law they be Judges to that purpose, and Judges cannot be challenged; and that's the reason why Noblemen cannot be challenged, for *Mag. Charta* saith, *Per Judicium Parium suorum*, and not *Veredictum*.

Cok's Litt. 294. a.

Cap. 29.

When the Peers (that were to be Tryers at the Arraignment of the Earls of *Essex* and *Southampton*) were called by name, the Earl of *Essex* demanded whether it were not lawful for them (as the use is to private men) to except against some of their Peers? The Judges answer'd, that such was the Credit and Estimation of the Peers of *England*, that they are neither compelled to an Oath in Arraignments, nor subjected to Exceptions.

Camb. Eliz. A. 1601.

QUERY

QUERY IV.

whether the Lord High-Steward *can collect the Evidence againſt the Priſoner, or confer with the Lords, touching the ſame, in the Priſoners abſence?*

SOL.

To this I anſwer negatively, for after the King's Learned Counſel have produc'd all their Evidence, the Priſoner ought to be preſent at all Conferences touching the ſame; and therefore it ſhall be neceſſary for all Priſoners, after Evidence given againſt them, before departure from the Bar, to require Juſtice of the *Lord High-Steward*, and of the other Lords; and that no Queſtion be demanded, or conference had by any with the Lords, but in open Court in their own hearing, otherwiſe ſuch Priſoners ſhall take no advantage thereof after Verdict and Judgment given.

QUERY VII.

If the Lords be equally divided, between guilty and not guilty, whether the party tryed ſhall be acquitted or condemned?

SOL.

In an Information in the Court of *Star-Chamber*, by the Attorney againſt Sir *Stephen Procter*, and others, for conſpiracy againſt, and ſcandal of the Earl of *Northampton*, and *Edward* Lord *Wootten*, two of his Majeſties moſt Honourable Privy Council; at the hearing of which Cauſe there ſat eight in Court, whereof four condemned the Defendants, and the other four (*viz.*) the Lord Chancellour, two Biſhops, and the Chancellour of the Exchequer, acquitted them; the Queſtion was, according as your Lordſhips have propos'd it, Whether the Defendants ſhould be condemned or not: And here it was moved by the King's Learned Counſel, that when the Voices are equal, that in that caſe of

Co. 4. Inſt. f. 64.

which part the Lord Chancellour was, on that ſide it ſhould be determin'd, without regard either to Plaintiff or Defendant: And it was reſolved, that regularly and *de communi Jure*, in reſpect of the equality of Voices, that no ſentence could be given as it holdeth in the High Court of Parliament, and all other Courts, according to the old rule, *Paribus ſententiis Reus abſolvitur*: And ſentence was never given againſt Sir *Stephen Proctor*, agreeable to the general rule in other Courts. In this point the Civil Law concurs with the Common. *Inter Pares Numero Judices ſi diſſonæ ſententiæ proferantur, in liberalibus quidem cauſis (ſecundum quod a Divo Pio conſtitutum eſt) pro libertate ſtatutum obtinet, in aliis autem cauſis pro Reo, quod & in Judiciis publicis, obtinere oportet.*

Vid. Grot. lib. 2. c. 5. nu. 18. de Jure Belli, &c.

Reus ſententiis paribus abſolvitur, & ſemper quicquid dubium eſt, humanitas milinat in melius.

Alter Judex damnat, alter abſolvit, & inter diſpares ſententias milior viniat.

I ſhall here take leave to make a little digreſſion from the Query, and conſider if a perſon that is forth-coming, can by Parliament be attainted of High-Treaſon, and never call'd to anſwer? This ſeems as much worth the inquiry, as other your Lordſhips Queries; and though omitted by you, I ſhall not let it paſs without ſome notice.

Co. 4. Inſt. f. 37, 38.

By the 2. of *H. 6.* we find a great Peer condemned without Arraignment or Anſwer; the like in 32 *H.* 8. one Attainted (though living and forth-coming) of High-Treaſon, without ever being called to Judgment: The legality whereof was ſcrupled, and demanded of the Judges whether the Act were void or not: with ſome pauſe, they adjudged it perillous, and of bad example to the Inferiour Courts; but 'twas agreed, if condemned

demned by Parliament, to be indisputable, though *Cap.* 29. 5 *E.* 3. *c.* 9. 28 *E.* 3. *c.* 5. of *Mag. Char.* affirms, that no man ought to be condemned without Answer, without a *Quid feciſti*? and all due proceedings at Law. *Qui ſtatuit aliquid parte inaudita altera, licet æquum ſtatuerit haud æquus fuerit.* *Senec. in Loco.*

With the Municipal Laws agree thoſe of the *Romans.*

Divi Severi & Antonini Magni reſcriptum eſt, ne quis abſens primatur, & hoc jure utimur, ne Abſentes damnentur, neque enim inaudita cauſa quemquam damnari æquitatis ratio patitur. D. 48. 17. *Acts* 25. *v.* 16. It is not the manner of the *Romans* to deliver any man to death, before the accuſed have his accuſers face to face, and licenſe to anſwer for himſelf.

QUERY VIII.

Whether the King, and one of the Houſes alone, or both without the King, can declare a Treaſon within the Stat. of 25 E. 3. cap. 2?

SOL.

John Duke of *Groyen* and *Lancaſter*, Steward of *England*, and *Thomas* Duke of *Gloceſter*, Conſtable of *England*, the King's Uncles, complained to the King, that *Thomas Talbot* Knight, with others his Adherents, conſpired the death of the ſaid Dukes, as the ſame was confeſſed, and well known, and prayed that the Parliament might judge of the fault, (which Petition was juſt, and according to the Branch of the Stat. of 25 *E.* 3.) but the Record ſaith further, that the King and Lords in Parliament adjudged the ſame fact to be High-Treaſon, which Judgment wanting the aſſent of the Commons, was no Declaration within the ſaid Stat. which is attended with this reſtriction.

That if any other caſe, ſuppoſed to be Treaſon, ſhould happen

happen before any Juſtices, the Juſtices ſhould tarry without going to judgment of the Treaſon, till the Caſe be ſhewed before the King, and his Parliament (conſiſting of Lords Spiritual and Temporal, and the Commons) whether it ought to be adjudged Treaſon or Felony.

QUERY IX.

Whether the Subjects of another Prince, Confederate with the King of England, *can be held for the King's Enemies?*

SOL.

It was objected againſt the Duke of *Norfolk*, concerning his relieving of the *Scots*, the Queens Enemies, which was proved by Letters, and *Baniſter's* confeſſion, *&c.* whereupon the Duke asked the Judges, *Whether the Subjects of another Prince, Confederate with the Queen of* England, *were to be holden for the Queens Enemies?* *Caleſin* Chief Juſtice anſwer'd, that they were; and that the Queen of *England* might make War with any Duke of *France*, and yet in the interim keep peace with the *French* King. And here 'tis to be noted, that the Judges ought not to deliver their Opinions before-hand, in any criminal caſe that may come before them judicially. In the Caſe of *Humphrey Stafford*, that Arch-Traytor *Huſſey*, Chief Juſtice, beſought King *H.* 7. that he would not deſire to know their Opinions before-hand for him, for they thought it ſhould come before them in the *King's-Bench* judicially, and then they would do that which of right they ought, which the King approv'd of. Beſides the nature of their Oath requires it, who are ſworn that they ſhall well and lawfully ſerve our Soveraign Lord the King, and his People, in the Office of a *Juſtice*; and that they ſhall do equal Law and execution of Right to all his Subjects.

Camb. Eliz. A. 1572.

QUERY

QUERY X.

Whether an Attainder of Treason may be falsified by the Plea of the Party?

S. O. L.

A. 1. *Mar.* A Commission of *Oyer* and *Terminer* in *London* was directed to Sir *Tho. White*, Lord Mayor, and to divers others, reciting, that where Sir *Robert Dudley* Knight, 9 *Jan.* 1. *Mar.* was Indicted of High-Treason before *Thomas* Duke of *Norfolk*, and fourteen other Commissioners in the County of *Norfolk*, (where in truth the Commission was directed to so many, but the Indictment was taken before Eight of them only) granting to them, or any four of them, Authority to receive the Indictment taken before fifteen Commissioners, and to proceed thereupon as Special Justices of *Oyer* and *Terminer*; by pretext whereof they proceeded, and upon confession of the said Sir *Rob. Dudley*, gave Judgment against him.

In this Case it was adjudged, that Sir *Rob. Dudley*, then Earl of *Leicester*, might falsifie the said Attainder by Plea, because it was void, and *coram non Judice*; for that the latter Commissioners had not power to proceed upon an Indictment taken before Eight, but before Fifteen, and so void. The Party is not driven to his Writ of Errour, but may falsifie the Attainder by Plea, shewing the special matter, which proveth it void *ut supra*. In which case the party forfeiteth neither Lands nor Goods.

'Tis holden by some, that if a person be attainted of High-Treason by the Common Law, that no Writ of Errour should be brought for the reversal of that Attainder, by reason of these words in the Stat. 33 *H.* 8. *cap.* 20. And if any person or persons shall be attainted of High-Treason by the course of the Common Law, *&c.*

that

that every ſuch Attainder by the Common Law, ſhall be of as good ſtrength, value, force and effect, as if it had been done by Authority of Parliament. But the contrary hereof was reſolved at a Parliament holden *A.* 25. *Eliz.* that a Writ of Errour ſhould be maintained for the reverſal of Erroneous Attainders of High-Treaſon by the Common Law; for that former Stat. is to be intended of lawful Attainders, and not where there is any Errour in the ſame: for by that of the Queen 'tis provided, *That no Record of Attainder of any perſon or perſons, of or for any High-Treaſon, where the party ſo Attainted is or hath been executed for the ſame, ſhall be,* &c. *in any wiſe hereafter reverſed, undone, avoided, or Impeached by any Plea, or for any Errour whatſoever.*

QUERY XI.

Whether torture, in caſe of Treaſon or Felony, may be uſed by our Law?

SOL.

Sir *John Forteſcue*, Chief Juſtice of *England*, who wrote in commendation of our Common Laws, preferreth the ſame for Government before the Civil Law; and particularly, that all tortures were againſt the Common Law expreſly; and he proceeds to ſhew the inconveniencies and miſchiefs thereof, by fearful examples; to which Learned Author I refer your Lordſhips.

Cap. 22.

Cap. 29. It is againſt *Mag. Charta*, which ſays, *Nullus liber homo capiatur, vel Impriſonetur, &c. aut aliquo modo deſtruatur, nec ſuper eum ibimus nec ſuper eum mittemus niſi per legale Judicium Parium ſuorum vel per Legem Terræ.* And accordingly all the Ancient Authors are againſt the inflicting pains and tortures upon Priſoners, before or after Attainder, but ſuch as anſwer the Judgment.

Co. 3. *Inſt. f.* 35.

John Holland, Earl of *Huntingdon*, was by King *H.* 6. created Duke of *Exeter*, and *A.* 26. *H.* 6. the King granted

granted to him the Office of the Conſtableſhip of the *Tower* of *London*. He and *William de la Poole*, Duke of *Suffolk*, with ſome others, intended to have brought in the Civil Laws; and for a beginning of the ſame, the Duke of *Exeter* firſt brought into the *Tower* the Rack, or Brake, allowed in many caſes by the Civil Law; and for that reaſon it was called the Duke of *Exeter*'s Daughter.

QUERY XII.

Whether the King, under the Great Seal, may command all Proceſs in Criminal Cauſes to ceaſe?

SOL.

We find (ſays *Coke*) a Diſcharge of further proceeding, directed to the *Judges* of the Court, *&c.* (not by way of pardoning the offence) but by the King's acknowledgment, under the Great Seal, of the Parties Innocence, with Commandment to the *Judges*, that in the former proceedings they ſhall altogether ſurceaſe; whereupon the Court will award, that the Party ſhall go *ſine Die*, and that there ſhall be no further proceedings againſt him. *William de Melton*, Archbiſhop of *York*, was accuſed in the *King*'s-*Bench*, *coram Rege & Concilio ſuo in Anno* 3. *Ed.* 3. for adherency to *Edmond* Earl of *Kent* in his Treaſons; whereunto the Arch-Biſhop pleaded *Not Guilty*; and after two Writs of *Venire Facias* awarded, the King directed his Writ under the Great Seal to the Judges of the *King*'s-*Bench*, to this effect.

Licet Venerabilis Pater Willielmus *Archiepiſcopus Ebor.*

bor. Stephanus London *Epiſcopus per Diverſa Brevia Noſtra coram Nobis ad ſectam Noſtram Implacitentur de eo, quod ipſi* Edmundo *Comiti Cantiæ adhæſiſſe debuerant, quia tamen prædict. Archiepiſcopus & Epiſcopus de adhæſione prædicta omnino Immunes reputamus, Vobis Mandamus quod Placitis prædictis coram Nobis ulterius tenend. omnino ſuperſedeatis Teſte meipſo, &c.* The Award of the Court hereupon is very obſervable: Viz. *Cujus Brevis prætextu, conſideratum eſt, quod prædictus Archiepiſcopus eat inde ſine die, &c. & ulterius non procedatur verſus eum.*

Paſch. 4. *E.* 3. *Rol.* 5. 3. *Stephen Graveſend*, Biſhop of *London*, was charged with the ſame offence in Parliament, *A.* 3. *E.* 3. whence, by Order of Parliament, he was referred to the *King*'s-*Bench* to be tryed, where he pleaded *Not Guilty*, and after was diſcharg'd, as the Arch-Biſhop. It may be thought, that accepting the Pardon, might be an implication of their fault, and therefore it run in a new ſtrain; but no man that is well advis'd, ſays the great Oracle of the Law, will refuſe God's or the King's Pardon; for in the King's diſpleaſure there is death, ſays the Holy Writ; and who knows how often he offends, and conſequently ſtands in need of it. But how far this Branch of the Prerogative may be extended, and what qualifications it may admit, belongs not to a private man to determine.

QUERY XIII.

whether a Perſon can be Attainted of High-Treaſon by general words?

SOL.

SOL.

Where by due courſe of Law a man cannot be Attainted of High-Treaſon, unleſs the Law fore-judge the offence ſuch, he ought not to be Attainted by general words, by Authority of Parliament, (as ſometime hath been uſed) but the Treaſon ought to be ſpecially expreſſed, ſeeing that the Court of Parliament is the Higheſt and moſt Honourable Court of Juſtice, and ought to give Example to the Inferiour, *Magis Exemplis quam præceptis ducimur.*

QUERY XIV.

whether a Subject of one Kingdom guilty of Treaſon, flying into another Kingdom, ought to be remitted to his own Soveraign?

SOL.

It is holden, and ſo it hath been reſolved, that divided Kingdoms, under ſeveral Kings in League one with another, are Sanctuaries for Servants or Subjects flying for ſafety; and upon demand, are not by the Laws and Liberties of Kingdoms to be delivered: And this Opinion ſeems grounded upon the Law in *Deut. c. 23. v. 15. Thou ſhalt not deliver unto his Maſter the Servant which is eſcaped from his Maſter unto thee.*

When the Lord *Paget* and *Arundel* came into *France* Sir *Edward Stafford*, Queen *Eliz.* Ambaſſadour there, diligently obſerved them, yet could by no means diſcover *Camb. El.* 1584.

what they attempted; he desir'd nevertheless of the *French* King, that they, with *Morgan*, and other *English*, who were practising against their Prince and Country, might be removed out of *France*: To which he received this answer, *That if they attempted any thing in* France, *the King would punish them according to Law, That all Kingdoms were free for Fugitives; and that it was the great concernment of Kings to maintain every one the Priviledges of his own Kingdom: That Queen* Eliz. *had not long since received into her Kingdom* Montgomery, *the Prince of* Conde, *and others of the* French *Nation; and that* Sagury, *the King of* Navarr's *Embassadour, was in* England *at this very time, practising to move new troubles against the* French *King.*

King *H.* 8. in the 28th year of his Reign, being in League with the *French* King, and in Enmity with the Pope, who was in League likewise with *France*, and had sent Cardinal *Poole* Embassadour to the *French* King, of whom K. *H.* 8. demanded the said Cardinal, being his Subject, and Attainted of Treason; and to that end caused a Treatise to be publisht, that it ought to be done *Jure Gentium, sed non prævaluit.*

Ferdinando, King of *Spain*, upon request made by *H.* 7. to have *Edmond de la Poole*, Earl of *Suffolk*, Attainted of High-Treason by Parliament, *A.* 19. *H.* 7. at first intending to observe the Priviledge and Liberty of Kings, in protecting such as came to him for succour and protection, delivered him not; yet in the end, upon the earnest request of the King, and his promise not to put him to death, he caused the said Earl to be delivered up to the King, who kept him in Prison, and

confirming his promise to be but personal, commanded his Son *Henry* after his death to execute him; which he caused to be done in the fifth year of his Reign.

I shall add one more Example of a Remission out of Zouch. *Cum quidam Stywardus Scotus, qui Mariam Scotorum Reginam veneno tollere conatus est, in Anglia deprehenderetur, Ed. Sextus Rex Angliæ eum in manus Regis Galliæ tradidit, ut debito supplicio Remitteretur, quod Nonnullis displicuit, quia etsi ratio suadeat, ut qui in Patria deliquit, in Patria Puniatur, aliter tamen de consuetudine, quod Remissionem usurpatum est.* Treat. de Judicio inter Gentes.

Having now run thorough the several *Query's*, which your *Lordships* have thought fit to propose; I Shall venture to set one step further, and start *Another* of my *Own*; with some Offers toward the Solution of which, I will make an end, *Viz.*

QUERY XV.

Whether in any Case it be Lawful for Subjects to Oppose their Prince?

SOL.

It must be resolv'd in the *Negative:* And that in *any* Case, or upon *any* Pretence whatsoever, it is utterly unlawful for *Subjects*, joyntly or singly; collectively, or representatively, to make any violent *Opposition* against their *Soveraign*; or to *Resist* him either in an Offensive or a defensive way. This *Assertion* you will find to be a *Truth*, that is Consonant to *Holy Writ*, *Reverend Antiquity*, *Sound Reason*, and

to

to the *Municipal Laws* of the *Land*, all the Sophiſtries and Argumentations, that Seditious and corrupted men are able to produce to the contrary notwithſtanding.

I. To begin with *Holy Scripture*. It is clear from *Deut*, c. 17. v. 12. which commands the *Iſraelites* to *put away evil from amongſt* them, by bringing to Publique Juſtice all ſuch Mutinous and Preſumptious perſons, as refus'd to *Obey* the *High Prieſt* and the *Judge*; that God impoſed an Obligation, even upon his own *People*, not to *Reſiſt* the *Supreme Magiſtrate*. And *v.* 13. makes the Reaſon of this *Severity* to be, to preſerve the People from being Poyſon'd in their *Allegiance* by the Malignity of ſuch *Examples*: That *all the People* (under what Notion or Qualification ſoever), *may hear and fear, and do no more preſumptuouſly*. The ſame expreſs Warrant of the *Word*, (and to the ſelf-ſame purpoſe) there is in *Joſhua*, C. 1. v. 18. *Whoſoever he be* (ſays the *Almighty* ſpeaking to him) *that doth rebel againſt thy Commandment, and will not harken to thy words, in all that thou commandeſt him, he ſhall be put to death*. *Saul* is generally condemned for perſecuting *David*, and attempting upon his Life: And yet though *David* had him twice at his mercy, he was not to be prevail'd upon to do him any Harm: *For who* (ſays he) *can lay his hand upon* (who can touch, who can ſtretch forth his hand againſt) *the Lords Anointed, and be Guiltleſs*? Now the *Signification* of the *Scripture-phraſe* [*Touch*, or *ſtretch forth the hand againſt the Lords Anointed*] is of a Large Extent: And the Guilt of this Horrid *Crime* may be incurr'd either by *lifting up our heels in ſcorn* againſt our *King*; By taking

1 *Sam* c. 24. *v.* 6. and *C.* 26. *v.* 11.

Pſal. 41. *v* 9.

king up Arms in our own defence, for *whosoever Resisteth the* Power, *Resisteth the Ordinance of God*; By not bringing to light such Traiterous Conspiracies as we know to be forming against him; By not endeavouring to defend him, when we see him in danger, for *Qui non vetat peccare, cum possit, jubet*; By striking at his Crown, usurping upon his Prerogative, or depriving him of his Revenue; By *Speaking* or even *Thinking* evil of him; for as the Tongue can strike without a Hand, so the Heart can curse without a Tongue: Or (in a Word) by any sort of indignity or out-rage offer'd either to his *Authority*, or *Person*. But to proceed.

Rom. 13. *Lev.* 5. *Jer.* 18. *v.* 18

Doth not Saint *Paul* enjoyn that *every Soul be Subject to the Higher Powers; for there is no Power but of God; and they that Resist shall receive to themselves Damnation*? Nay, and doth not Saint *Peter* also inculcate a Patient Toleration of injuries, and recommend unto our imitation the *Example* of our Blessed *Saviour, who when he was reviled, reviled not again, when he suffered he threaten'd not; but referr'd the Vengeance to him that judgeth Righteously*. If ever man had just Cause to *Resist*, then had he; yet would he not do it, but check'd Saint *Peters* forwardness that way with a, *Whoso taketh up the Sword, shall perish by the Sword*. We find in the *Creed* that *Pontius Pilate* is Recorded by the *Holy Ghost* (which influenced the *Church* in the composing of it) this now was certainly done for our *Edification*, and to insinuate, that as we tender our Salvation by our Faith in *Christ*, we must be careful of paying a *Chearful* Obedience to the *Lawful* Commands of the *Magistrate*, and to submit humbly, and *Suffering*, to

1 *Pet.* 2. *v.* 19. 20, 21, 22.

Mat. 26. *v.* 52.

those

those that are *otherwise*. And this *Obligation* continues, even though the *Prince* should be a *Heathen*, and the *Cause* we smart for, *Christ* and his *Church*.

II. As to *Reverend Antiquity* Saint *Ambrose* upon the Point of *Non-Resistance*, discourses to this effect; *I have not so learn'd Christ*, (says he) *as to seek by force to oppose Authority*; I *can mourn and Lament*; *but for Other* Resistance I *neither will nor ought to make any*. Saint *Cyprian* speaks to the same purpose; *It is out of a Principle of Conscience* (says he) *that none of us make any Opposition, when we are unjustly Seiz'd upon, or study a Revenge upon our Tormentors*; *for the Numerousness of our* Party *were otherwise sufficient to bear us out in such a Design*. And so does *Tertullian*. "We are not (says he) *despoyl'd* of our Goods, "they are only *Sequestred* for our benefit, and en- "trusted in safe hands; God keeps them for our "use, and will return them with ample Encrease. "If you abstain from *Fighting*, he will Espouse your "Quarrel; and question not but your Enemies will "have the worst on't, for your *Wounds* will *Save* "you, and if you fall *Martyrs* you will rise *Saints*. "What cannot our sufferings bring about? They "make even God himself our *Debtor*; he Owes us "*Heaven* for our selves, and he owes *Hell* for our "Enemies: But yet we breath our Souls in prayer that "he may be entreated not to pay This.

What *Example* now can there be more *Glorious* or more *Instructive*, then that of the *Theban Legion*, recorded in *Ecclesiastical Story*? The Emperour *Maximinian* commanding his Army to offer Sacrifice to *False Gods*, this *Band* (consisting of about 7000 men) remov'd

remov'd their Quarters, to the end that they might avoid giving offence; but yet he preſſes them to bear a part in this Diabolical ſervice, and upon their humble refuſal puts them forthwith to a *Decimation*, which they chearfully ſubmit unto, praying for their Murtherers: The *Tyrant* would not yet be ſatisfied, but renew'd his Commands to the Remainder of them; and finding them ſtill to continue Reſolute rather to die than to diſobey God, he butcher'd them all, without the leaſt Reſiſtance on their part. This was truly to *Confeſs* him that was led as a ſheep to the Slaughter! Nay ſo very Fruitful are the Antient *Fathers* in *Inſtances* of this quality, that it would be but Superfluous to recount any more of them; the General Practice of the Primitive Chriſtians being ſo evident in this point, that the greateſt *Sticklers* for that *ſin of Witchcraft*, *Rebellion*, have not the Confidence to deny it.

III. That a *Liberty* to *Reſiſt* thoſe in whom the *Law* has plac'd *the Power of the Sword* is Repugnant to *Sound Reaſon*, I ſhall endeavour to make out by the following Arguments.

1. Such a *Licenſe* to Subjects againſt their Rulers, is deſtructive of the very Nature of *Government*, and of *Humane Society*; for it diſſolves the ſinews of the *State*, and ſplits it into as many Factions as it has Enemies. And it is impoſſible to conceive *Two* Equal *Supremacies* of Power in the *Nation*, and yet the *Kingdome* to remaine *One*. For this it is that diſtinguiſhes *England*, *France*, *Spain*, and all other *Independent Kingdomes* one from another. But then it is Childiſh to Fancy the *Policy* of any Monarchy (much

leſs of our own) to be ſo groſly defective, as to be the Author of its own ruine, by dividing the *State* Legally againſt it ſelf. So that to take up Arms without or againſt *Authority*, is down right *Rebellion*, and the Conſequence *Murther* and *Rapine*.

2. It is both Reaſonable, and neceſſary, that all *Governments* ſhould have a Supereminent, Coercive *Power* over *Particular* Perſons; for otherwiſe a *City* would immediately be hurry'd into an *Anarchy*, and that which ought to be *One* Entire Body, become ſo many *Independnet* men.

3. That which to *One Private* Perſon is due, as a *Man*, the ſame is alſo due to *Another*; and if *I* may aſſume to my ſelf a power of judging when to *Reſiſt* my *Prince*, every private man may do ſo too. Now what Peace, what *Society* can there be hop'd for, where every one is at freedom to diſcharge himſelf from the Obligation of all *Humane Laws*, and to oppoſe them at pleaſure? Or what *Obedience* can conſiſt with ſuch *Reſiſtance*? Nor will ſuch *Libertines* know where to ſtop; for it is uſual for them to fall foul upon all ſuch as have a deeper ſenſe of *Honeſty* and *Allegiance* than themſelves. And what *Law* of *God* or *Man* was ever heard of, that approv'd of my Murthering, a Loyal man becuaſe I my ſelf am a *Rebel*? Beſide that this Lewd *Opinion* Equally wounds the very *Aſſertors* of it; for any body may be allow'd to do That to *Them*, which they have done to their Rightful Prince and his Faithful Subjects.

4. Now Touching the *Municipal Laws* of the *Land*; that

that this *Reſiſtance* is againſt *Them*, I ſhall make it Evident. *Bracton* ſays, *Si ab eo (ſcil. Rege) Petatur; cum* Breve *non Currat contra Ipſum, locus erit ſupplicationi, quod factum ſuum Corrigat & Emendat; quod quidem ſi non fecerit, ſatis ſufficit ei ad pœnam, quod* Dominum *Expectet Ultorem: Nemo quidem de factis ſuis preſumat deſputare, Multo fortius contra factum ſuum venire.* If a Subject find himſelf agriev'd by the *King*, he is put to his Petition (becauſe no *Writ* can lie againſt him) for Redreſs; which if he will not vouchſafe, it is a ſufficient *Penalty*, that he is to expect Puniſhment from the *Almighty*. No man may preſume to queſtion what *He* does, much leſs to Oppoſe him. *Fleta* concurs with *Bracton* in this point; *Vid. Lib.* 1. c. 17. And *Lombard* writes thus, *Nemo Dominum* (ſays he) *judicet, vel judicium proferat ſuper eum cujus Ligius ſit.* So likewiſe the *Statute* of 25. Ed. 3. c. 2. *de proditionibus*, makes it *Treaſon* to compaſs the *Death* of the *King*. And to what end ſhould theſe, or any other *Proviſions* againſt *Treaſon* have been eſtabliſh'd, if *Reſiſtance* were in *Any* Caſe Lawful? Or what does the *Oath of Aliegiance* ſignifie, if the people may take up *Arms* againſt their *Prince* at pleaſure? The *Form* of it runs thus; *You ſhall ſwear that from this day forward you ſhall be True and Faithful unto our Soveraign Lord King* Charles, *and Truth and faith ſhall bear of Life and Member, and Terrene Honour; and you ſhall neither know nor hear of any ill or Dammage intended unto him that you ſhall not defend* &c. *My Lord Coke* comments upon it, that *the Subject and Effect, of this Oath is due by the Law of Nature, the Form and Addition is, ex proviſione Hominis.* To Conclude, the Famous Biſhop *Marks* is Poſitive, That *a King by Lineal Succeſſion, being Lawfully inveſted, cannot upon Imputation either of Negligence or Tyranny be Oppoſed, or Depoſed by his own Subjects.* Thus

Lib. 5. *c.* 8.

Thus having given a deſcription of the Lord High-Stewards Office, and the manner how a Peer is to be Arraigned before him, with ſuch Solutions to ſeveral Queries, as I have collected out of the Books of Law and Hiſtory, *I* ſhall conclude all with this Advertiſement;

That the ſureſt way to eſcape both the Guilt and Puniſhment of High-Treaſon, is to *Fear God, and Honour the King.* The Counſel given us by the wiſeſt of Kings is worthy to be adverted to. *Think not evil of the King in thy Heart, neither utter it with thy lips, leaſt a Bird of the Air carry the voice, and that which hath wings diſcover the matter.* Let us deteſt the Principles believ'd and practis'd by thoſe Audacious Violators of Royal Majeſty, the *Spawn* of *Loyola*, and keep faſt to the Doctrine of our own Church, which poſitively Aſſerts, That the ſacred Bond of Subjects, in Obedience to their ſoveraign, is inviolable, and cannot be diſſolved either upon the account of ſuppoſed Crimes in the perſon of the Prince, as Tyranny, Infidelity, Hereſie, *&c.* Or by any Acts of the Biſhops of *Rome*, as Diſpenſations, Excommunications, *&c.*

Eccleſ. 13. *v.* 28.

It was once ſaid in *Valonger's* Caſe, that he that is throughly Popiſh, may eaſily be wrapt from his Loyalty.

F I N I S.